FOUNDATION SCHOOLS

Introduction

1. The Government's five-year strategy for children and learners envisages a reformed secondary system characterised by legal and financial freedom, smart accountability and effective collaboration. The strategy sets out a range of measures aimed at giving secondary schools the independence and capacity to realise their full potential.

2. The strategy explains how the Government proposes to give all community and voluntary controlled (VC) secondary schools a route to greater independence by acquiring foundation status. Foundation status is intended to promote innovation and educational entrepreneurship by giving school leaders more freedom to decide how best to meet the needs of their pupils, parents and wider communities. A community or VC school changing category to foundation would automatically:

- take on formal ownership of its assets;
- become the direct employer of its own staff;
- become its own admission authority; and
- be able to publish statutory proposals for other changes.

3. Over 500 schools already enjoy the benefits of foundation status, operating within a framework of all-ability admissions and fair funding. Others can acquire them by publishing proposals to change category to foundation. But the full statutory proposal process, including decision by the School Organisation Committee (SOC), may act as a disincentive to change. We accordingly propose to give all secondary community and VC schools the right to take on these powers and responsibilities through a streamlined process. We also intend to extend the flexibility and freedoms available to foundation schools, in particular by making it possible for them to strengthen their governing bodies in partnership with external sponsors.

Streamlined process for acquiring foundation status

<u>Current arrangements</u>

4. At the moment, all schools wishing to change category must follow the procedures set out in schedule 8 to the School Standards and Framework Act 1998 (the SSFA) and in the Education (Change of Category of Maintained Schools) (England) Regulations 2000 (SI 2000/2195), as amended by the Education (Change of Category of Maintained Schools) (England) (Amendment) Regulations 2003 (SI 2003/2136).

5. In summary, the Act and regulations require governing bodies to publish proposals setting out their intentions, having first consulted locally. The proposals must included prescribed information. Once proposals have

been published, there is a six week period during which interested parties may make representations. At the end of this period the proposals fall to the SOC to decide. If the SOC does not decide the proposals within a further two months, or cannot reach a unanimous decision on them, they are referred to the Adjudicator for decision.

Proposed arrangements

6. The five-year strategy proposes that every secondary school which is not a foundation school will have the right, by a simple vote of its governing body, following a brief period of consultation, to become one. The current requirement for governing bodies to publish proposals to change category is set out in primary legislation (schedule 8 to the SSFA) and we have no plans to remove this requirement. In order to give effect to the strategy proposals we are proposing to amend the relevant secondary legislation – the change of category regulations - so that:

- governing bodies are not required to consult *before* publishing proposals;
- the period during which representations about the proposals may be made *after* publication is reduced to four weeks
- the amount of prescribed information which schools must provide with their proposals is greatly reduced; and
- the governing body may determine their own proposals, and their determination is final.

7. Draft amending regulations are attached. The principal amendments are to schedules 1 and 2 to the current regulations. These amendments relate only to proposals to change the category of schools from community and VC to foundation: they would not affect the procedures for other change of category proposals.

8. It should be noted that the streamlined procedure would not allow for a school which does not have a religious character to acquire a religious character, or to change from one religious character to another. The Government believes that the issue of whether or not a school has a religious character is so important that it should be determined according to the full local decision making process. As now, therefore, proposals would need to be published to close the school and promoters would need to bring forward proposals for a new foundation school with a religious character. An existing VC school with a religious character would, however, be able to change category to foundation and retain its existing religious character under the streamlined arrangements.

9. The strategy document makes clear that the most poorly-performing schools will not be able to benefit from the new arrangements. For the purpose of the draft regulations, poorly-performing schools are those to which section 15 of or schedule 15 to the SSFA applies. The governing bodies of

such schools would not be able to publish and decide proposals under the streamlined procedures.

10. As indicated above, the draft amending regulations envisage removing the requirement for consultation by governing bodies before they publish proposals. It would nevertheless be advisable for governing bodies to establish from the LEA before publishing proposals what rights and liabilities might need to be apportioned in the course of implementing a change of category. For example, a third party might have an interest in land used by the school or the school might be covered by a PFI contract. Such considerations would not affect governors' ability to publish and determine proposals to change category or necessarily prevent the transfer of land.

11. The arrangements for transferring staff contracts and land when a school changes category are governed by schedules 3-6 to the current change of category regulations, which we have no plans to amend. The Education (New Arrangements for Property Transfers) Regulations 2000 (SI 2000/3209) would also continue to apply to the transfer of land under the streamlined arrangements.

12. Subject to the outcome of this consultation, we plan to issue further guidance to schools on the changing category under the streamlined arrangements, including model proposals.

Freedoms and flexibilities for foundation schools

13. The 5-year strategy explains how we want to enable schools to strengthen their governing bodies, of their own volition. In particular, we wish to encourage foundation secondary schools to acquire foundations which will be able to appoint the majority of the governing body of the school. Foundations will also own land on trust for schools, by virtue of subsection 21(3) of the SSFA.

14. Voluntary aided schools are already supported by foundations (the majority of which are church or other faith group based) which appoint a majority of governors. Similarly, Academies are run by charitable companies established by business and voluntary sector sponsors which provide a majority of governors. We want more secondary schools to be able to build permanent relationships with other partners in this way. Experience suggests that the backing of a foundation can help strengthen a school's mission and ethos, and inject drive and dynamism into school leadership. A small minority of existing foundation schools have foundations, but those foundations cannot appoint a majority of governors at present. The attached draft regulations will enable secondary schools to acquire foundations with the ability to appoint a majority of the governing body, if the existing governing body so wishes.

15. There are currently three ways in which a school might acquire a foundation:

- it could join with two or more other schools to establish a foundation body, as provided for by subsection 21(4) of the SSFA and the

Education (Foundation Body) (England) Regulations 2000 (SI 2000/2872);

- a bespoke foundation could be established to appoint governors to the school and hold its property on trust; or

- an existing charity with educational objects might act as a foundation for a school.

In all circumstances the foundation must be a charitable body with objects which permit it to carry out the intended functions in relation to the school. The Department will be making further advice and support available to schools wishing to acquire foundations.

16. A community school may acquire a foundation in the course of changing category to foundation. Where the governors of a school intend that it should do so, they should provide details of the foundation in their proposals to change category. The change of category regulations provide that where a foundation is established, land held by the LEA for the purposes of the school must be transferred to it. Schools may also join foundation bodies upon changing category, in which case the land will be transferred to the foundation body. Where there is no foundation, and the school does not join a foundation body, the land will be transferred to the governing body.

17. A VC school changing category will retain its existing foundation. There is, accordingly, no transfer of assets.

18. Community schools which change category without establishing a foundation may subsequently acquire a foundation at any time. Similarly, existing foundation schools which do not have a foundation may also acquire one and the Government hopes that more will decide to pursue that option. The Government believes that when they do, they should consult interested parties in the light of the proposals for foundations to appoint a majority of the members of school governing bodies. Paragraph 23 below explains how we propose to amend regulations to require such consultation.

19. The arrangements for the constitution of governing bodies are contained in the School Governance (Constitution) (England) Regulations 2003 (SI 2003/348).

20. Our intention is that the current arrangements for foundation schools as set out in regulation 14 of the regulations should continue to apply to all primary foundation schools, and to secondary foundation schools without a foundation, as set out in the table after paragraph 23 below.

21. For secondary schools with a foundation, the Government proposes that the foundation should be able to appoint a majority of the governing body. This would include both schools that change to category to foundation status under the new streamlined process and existing foundation schools which already have a foundation, or acquire one. Draft regulations giving effect to this proposal are attached. We also intend to reflect the principles set out in

the draft regulations to regulations relating to federations and governing bodies for new schools.

22. The table below compares the current arrangements with our proposals for schools with foundations. A key feature of the proposed arrangements is that they ensure that parents will continue to constitute at least 1/3 of the members of foundation school governing bodies. More generally, the proposed arrangements are permissive: they give schools considerable flexibility in determining the number of governors in each category. A further table is attached setting out potential constitutional models for foundation schools with foundations.

23. As indicated above, we believe that schools should consult interested parties when they acquire a foundation which will be able to appoint a majority of governors (and which will hold land on trust for the school). The draft amending regulations accordingly amend regulation 31 of the constitution regulations to provide for governing bodies to consult on proposed variations to instruments of government associated with the acquisition of a foundation.

Comparison of current and proposed arrangements:

Category of governor	**Current principles for foundation schools**	**Proposed principles for secondary foundation schools with foundations**
1. Parents	At least 1/3	At least 1 parent - elected, or appointed by the GB
2. Staff	At least 2, but no more than 1/3	At least 2, but no more than 1/3
3. LEA	At least 1, but no more than 1/5	At least 1, but no more than 1/5
4. Community	1/10 or more	1/10 or more
5. Foundation	At least 2, but no more than ¼	At least 2 and can have a majority of up to 2, but the foundation governors must include a sufficient number of persons eligible as parent governors so that when counted with the category 1 parent governors they make up at least 1/3 of the GB.

Sponsor governors

24. We also propose to amend the regulations so that the governing bodies of all secondary schools are able to appoint up to four sponsor governors. This will enable schools to strengthen their relationships with external partners. Currently all schools can appoint up to two sponsor governors. Where foundation schools with foundations appoint sponsor governors, it may not be possible for the foundation governors to constitute an outright majority.